

Samuel A. Schwartz, Esq.  
Nevada Bar No. 10985  
Bryan A. Lindsey, Esq.  
Nevada Bar No. 10662  
The Schwartz Law Firm, Inc.  
6623 Las Vegas Blvd. South, Suite 300  
Las Vegas, Nevada 89119  
Telephone: (702) 385-5544  
Facsimile: (702) 385-2741  
Attorneys for the Debtor

E-Filed: November 5, 2014

**UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEVADA**

In re: ) Case No. 14-15912-ABL  
)  
Jeffrey S. Life, ) Chapter 11  
)  
Debtor. ) Hearing Date: November 19, 2014  
) Hearing Time: 1:30 p.m.  
)

**OPPOSITION TO THE MOTION FOR RELIEF  
FROM STAY TO PROCEED WITH ARBITRATION**

Jeffrey S. Life, the above-captioned debtor and debtor-in-possession (the “**Debtor**”), by and through his counsel of record, The Schwartz Law Firm, Inc., hereby files his opposition (the “**Opposition**”) to the Motion (the “**Motion**”) of Cenegenics, LLC (“**Cenegenics**”) for Relief from Stay to Proceed with Arbitration. In support of this Opposition, the Debtor respectfully states as follows:

**Preliminary Statement**

1. As this Court is aware, there is a pending motion to reject (the “**Rejection Motion**”) the Debtor’s contracts (in their entirety) with Cenegenics (the “**Cenegenics Contracts**”), including the arbitration provision in the Cenegenics Contracts. In connection with the Rejection Motion, the Debtor submits that cause does not exist to grant relief from the automatic stay because the claims of Cenegenics will be resolved against the Debtor in his bankruptcy case, and in connection with the Rejection Motion.

2. In addition, cause does not exist to grant relief from the automatic stay as the facts and circumstances of this case support resolving all claims between the Debtor and Cenegenics in the Debtor's bankruptcy proceeding. Indeed, the real dispute here is between Cenegenics and Dr. Life's medical practice, not the Debtor. Moreover, that dispute is nearly resolved. Accordingly, the Motion should be denied.

### **Factual Background**

3. Cenegenics makes loose reference to alternative dispute resolution provisions in the Cenegenics Contracts. Specifically, Section 8.3 of the Image Licensing Agreement (the "ILA") governs the dispute resolution process of that contract. The section requires election of arbitration, selection of a "Resolver" and then the conducting of the arbitration. ILA, Section 8.3. Cenegenics has not followed these procedures, however, as no arbitration is pending or was pending prepetition.

4. The ILA is specific as to what is subject to arbitration. Arbitration under the ILA applies to termination of the agreement by Dr. Life (Section 8.1) or termination by Cenegenics (Section 8.2). The ILA "dispute resolution process applies only to disputes arising under Section 8." Those disputes only concern whether the ILA can be terminated and do not extend beyond that limited scope.

5. The Management Services Agreement (the "MSA") contains two alternative dispute resolution provisions. Section 8.7 of the MSA outlines an arbitration procedure, but by its own terms, only applies to "termination for cause."<sup>1</sup> The termination of the MSA occurred on March 1, 2014 (as found by this Court in its oral ruling on the Debtor's first attempt to reject the ILA), and neither party has initiated arbitration concerning that event.

---

<sup>1</sup> Section 8.11 of the MSA qualifies that "[t]his dispute resolution process applies only to disputes arising under Section 8.4." Section 8.4 of the MSA governs termination for cause.

6. The other arbitration provision within the MSA is the “Valuation Process” which is designed to resolve any dispute concerning the amount Cenegenics is required to pay to Dr. Life for his medical practice (the “PC”) upon termination. Cenegenics has operated the PC since March 1, 2014, without making any payments to Dr. Life or his PC. The valuation process for the PC is nearly completed as follows:

- The PC gave Cenegenics notice of termination on December 26, 2013;
- The MSA terminated on March 1, 2014;
- The PC retained a CPA who opined that the Practice is worth \$1,023,000;
- Cenegenics retained a CPA who opined that the Practice has a value of zero;
- The two CPA’s met and conferred. Unable to reach an agreement, the two CPA’s designated a third CPA, George Swarts, as the Resolver;
- On September 12, 2014, the PC, through counsel, provided both reports to Mr. Swarts and asked him to derive his own valuation number within 30 days (in accordance with Section 8.5(B)(iii) of the MSA); and
- On September 22, 2014, Cenegenics wrote a letter to Mr. Swarts and informed him that he could not proceed “due to the automatic stay.”

7. This factual history reveals several key points:

- The Debtor is not a party to the Valuation Process;
- No Claim has been made against the Debtor within the Valuation Proceedings;
- The Valuation Proceedings are in their final stage; and
- Cenegenics is preventing the Valuation Proceedings from concluding by using the Automatic Stay as a shield, to the detriment of the Debtor.

For the reasons set forth herein, Cenegenics Motion should be denied, Mr. Swarts should be allowed to complete his determination of the value of the PC, and Cenegenics should be directed to file a proof of claim in this case.

**Legal Argument**

**A. Cause for Relief Does Not Exist Under Section 362(d)(1)**

8. Under Section 362(d)(1) of the Bankruptcy Code, the court shall grant relief from the stay . . . such as by terminating, annulling, modifying, or conditioning such stay . . . for cause, including the lack of adequate protection of an interest in property. 11 U.S.C. § 362(d)(1). As the party seeking stay relief, Cenegenics must first establish a *prime facie* case that cause exists for relief under Section 362(d)(1) of the Bankruptcy Code. See United States v. Gould (In re Gould), 401 B.R. 415, 426 (B.A.P. 9th Cir. 2009). Moreover, “cause” has no clear definition and is determined on a case-by-case basis. In re Conejo Enterprises, Inc., 96 F.3d 346, 352 (9th Cir. 1996).

9. Cenegenics has failed to show cause, let alone good cause, for relief from the automatic stay. “Factors to consider in determining whether the automatic stay should be modified for cause include: (1) an interference with the bankruptcy; (2) good or bad faith of the debtor; (3) injury to the debtor and other creditors if the stay is modified; (4) injury to the movant if the stay is not modified; and (5) the relative proportionality of the harms from modifying or continuing the stay.” In re A Partners, LLC, 344 B.R. 114, 127 (Bankr. E.D. Cal. 2006).

10. None of these above factors favor permitting Cenegenics to secure relief from the automatic stay. In fact, all of these factors favor the Debtor.

11. Relief from the stay would actually interfere with the bankruptcy. Cenegenics, like any other creditor, can file a proof of claim for their damages due to the Debtor’s rejection of the Cenegenics Contracts. Indeed, forcing the Debtor to divert scarce administrative resources to arbitration would cause great injury to the Debtor. Arbitration

1 would also be futile in this case due to the pending Rejection Motion, and the fact that  
2 Cenegenics' claims against the Debtor can be resolved by the Bankruptcy Court. In addition,  
3 the automatic stay would prohibit enforcement of any arbitration award.  
4

5 12. The time necessary would cause great harm to the Debtor and its estate.  
6 There is no indication of when the arbitration may start or conclude, meaning that  
7 Cenegenics could be ongoing and resolved while these bankruptcy proceedings move to their  
8 conclusion.  
9

10 13. Moving forward with arbitration will cause the Debtor to incur unnecessary  
11 expenses to the detriment of his creditors. Indeed, the Debtor would be required to dedicate  
12 scarce resources to defend arbitration claims when his efforts would be best focused on these  
13 bankruptcy proceedings. In fact, courts refuse to grant relief from the automatic stay to  
14 determine the arbitrability of grievance against Chapter 11 debtors because "it would  
15 improperly burden the bankruptcy estate to impose upon it the cost of arbitration  
16 unnecessarily. In re Valley Kitchens, Inc., 58 B.R. 6, 9-10 (Bankr. S.D. Ohio 1985). Here,  
17 the Debtor relates this conclusion to the circumstances of this case. The financial capability  
18 of Dr. Life to fund administrative expenses is limited, and the fees for services of an  
19 arbitrator would not be a negligible item for him. Indeed, given the nature of the dispute and  
20 history between Dr. Life and Cenegenics, the costs to fund arbitration on behalf of the Debtor  
21 could be significant.  
22

23 14. Furthermore, other creditors could be harmed by allowing Cenegenics'  
24 demanded arbitration, including the uncertainty of the outcome of the proceedings and the  
25 Debtor's potential exposure via Cenegenics' end run of this Court's claims-adjudication  
26 process. There will be no injury to Cenegenics is the stay is not modified as it will be  
27  
28  
29  
30  
31  
32

1 permitted to pursue their claims before this Court. In sum, the Debtor will be harmed far  
2 more by lifting the stay than Cenegenics.

3  
4 15. In re Thorpe Insulation, Co., 671 F.3d 1011 (9th Cir. 2012) is on point. In  
5 that case, a creditor moved for relief from the stay to compel arbitration based on the debtor's  
6 alleged breach of a settlement agreement, which the bankruptcy court denied. As a  
7 preliminary matter, the Ninth Circuit held that "a bankruptcy court has discretion to decline  
8 to enforce an otherwise applicable arbitration provision" if the arbitration would conflict with  
9 the purposes of the bankruptcy code. Id. at 1021. Moreover, Thorpe Insulation held that the  
10 purposes of the Bankruptcy Code include "centralization of disputes concerning a debtor's  
11 legal obligations" and "protect[ing] creditors and reorganizing debtors from piecemeal  
12 litigation." Id. at 1022. The Ninth Circuit continued that "arbitration of a creditor's claims  
13 against a debtor, even if conducted expeditiously, prevents the coordinated resolution of  
14 debtor-creditor rights, and can delay the confirmation of a plan of reorganization." Id. at  
15 1023.

16  
17 16. Simply put, the same rationale applies here and the Cenegenics' claims can  
18 and should be resolved in the Debtor's bankruptcy case.

19  
20 **B. The Sonnax Factors Are Not Applicable to this Matter**

21  
22 17. Cenegenics lists 12 factors this Court should consider to determine whether to  
23 lift the stay to permit litigation to continue in another forum. See Motion, p. 7. Importantly,  
24 however, the 12 factors from the Second Circuit in In re Sonnax Indust., Inc., 907 F.2d 1280,  
25 1285 (2nd Cir. 1990) do not apply for parties to proceeding with dispute resolution  
26 procedures in a contract, but rather, apply to permit pending litigation to continue in another  
27 forum. See In re Smith, 389 B.R. 902 (Bankr. D. Nev. 2008) (stating that the twelve Sonnax  
28  
29  
30  
31  
32

1 factors a court should weigh in determining whether to lift the stay to permit pending  
2 litigation to continue in another forum).

3  
4 18. Here, there is no pending litigation in another forum. Rather, the Cenegenics  
5 Contracts list specific dispute resolution procedures, including arbitration. As acknowledged  
6 by Cenegenics, however, no mediation or arbitration is currently pending.

7  
8 19. Notwithstanding the above, the Sonnax factors do not weigh in favor of lifting  
9 the automatic stay.

10  
11 20. (i) Whether the relief will result in a partial or complete resolution of the  
12 issues. While Cenegenics argues that arbitration will result in a complete resolution of all the  
13 disputes with Dr. Life and his non-debtor related entities, there are separate disputes and  
14 claims at hand, and there is no guarantee that arbitration will result in a global solution of all  
15 issues. Therefore, arbitration may result in only a partial resolution of the issues, and there is  
16 no guarantee there will be a global resolution of all the separate issues at the same time.  
17 Moreover, there is no showing by Cenegenics that Mr. Swarts cannot simply issue his  
18 decision regarding the value of the PC.

19  
20  
21 21. (ii) The lack of any connection with or interference with the bankruptcy case.  
22 As stated above, arbitration will interfere with Dr. Life's bankruptcy case. He has already  
23 filed the Rejection Motion and intends to resolve Cenegenics' claims against him personally  
24 in his bankruptcy case. Moreover, the time and expense necessary to participate in the  
25 arbitration will cause a significant administrative burden on Dr. Life and his not allow him to  
26 focus his limited time and resources on his reorganization.

27  
28  
29 22. (iii) Whether the foreign proceeding involves the debtor as a fiduciary. The  
30 arbitration does not involve the Debtor as a fiduciary. As set forth above, the issue truly  
31  
32

1 relates to the value of the PC, and there is no basis to stop Mr. Swarts from finishing the  
2 valuation process under the MSA at this time.

3  
4 23. (iv) Whether a specialized tribunal has been established to hear the particular  
5 cause of action and whether that tribunal has the expertise to hear such cases. There has been  
6 no specialized tribunal to hear the issues in this case, save the 3 certified public accountants  
7 that are nearly finished with their work. Simply put, Cenegenics seeks to participate in  
8 arbitration before a neutral arbitrator, where no basis under either the ILA or the MSA exists  
9 to pursue arbitration. The arbitration proceeding is not a “specialized tribunal.”  
10  
11

12 24. (v) Whether the debtor’s insurance carrier has assumed full financial  
13 responsibility for defending the litigation. Here, the Debtor’s insurance carrier has not  
14 assumed financial responsibility for defending the litigation.  
15

16 25. (vi) Whether the action essentially involves third parties, and the debtor  
17 functions only as a bailee of conduit for the goods or proceeds in question. Here, the Debtor  
18 does not function only as a bailee of conduit for the goods or proceeds in question.  
19

20 26. (vii) Whether the litigation in another forum would prejudice the interest of  
21 other creditors, the creditors’ committee and other interested parties. Proceeding with  
22 arbitration in this matter will likely prejudice other creditors, as the Debtor will be forced to  
23 devote his time, energy and resources to the arbitration and away from the bankruptcy case,  
24 especially when the third party accountant is prepared to issue his decision. Other creditors  
25 will suffer as the Debtor will be forced to use estate resources that could otherwise be  
26 available for other creditors.  
27  
28

29 27. (viii) Whether the judgment claim arising from the foreign action is subject to  
30 equitable subordination under Section 510(c). Here, no judgment claim would be subject to  
31  
32



1 equitable subordination under Section 510(c).

2 28. (ix) Whether movant's success in the foreign proceeding would result in a  
3 judicial lien avoidable by the debtor under Section 522(f). Here, the results of the arbitration  
4 proceeding would not result in a judicial lien avoidable by the debtor under Section 522(f).  
5

6 29. (x) The interests of judicial economy and the expeditious and economical  
7 determination of litigation for the parties. Proceeding with arbitration in this matter will  
8 neither be efficient, expeditious or economical. Indeed, the matter is nearly resolved with the  
9 work to be finished by Mr. Swartz. Conversely, arbitration would cause the Debtor to devote  
10 significant time, expense and estate resources away from his Chapter 11 case. Moreover, the  
11 arbitration process would start from scratch and there is no time table for when it would be  
12 resolved. Simply put, proceeding with arbitration does not promote judicial economy.  
13  
14  
15

16 30. (xi) Whether the foreign proceedings have progressed to the point where the  
17 parties are prepared for trial. In this case, the arbitration proceeding has not even started, let  
18 alone progressed to a point where the parties are prepared for trial.  
19

20 31. (xii) The impact of the stay on the parties and the "balance of hurt." As set  
21 forth above, the Debtor will suffer significant harm in having to devote time and resources  
22 defending claims in arbitration when the same can be resolved in the bankruptcy case.  
23 Moreover, there is no guarantee that the separate issues involving the Debtor's non-debtor  
24 entities will be resolved in one arbitration proceeding. Moreover, Cenegenics will not be  
25 harmed in having to prosecute its claims through the Debtor's bankruptcy case like every  
26 other creditor.  
27  
28  
29

30 32. As set forth above, nearly all of the above-factors weigh against granting  
31 relief from the automatic stay to proceed with arbitration as Cenegenics requests.  
32

1 Accordingly, Cenegenics has not established that “cause” exists to grant relief from the  
2 automatic stay pursuant to 11 U.S.C. § 362(d)(1).

3  
4 **C. A Waiver of the 14-Day Stay Is Not Warranted**

5 33. A waiver of the 14-day stay is only appropriate when there is a showing of  
6 cause. Here, Cenegenics simply requests a waiver of the 14-day, but unfortunately, such  
7 statement is not “cause” for a waiver of the 14-day stay. Thus, if the Court determines to grant  
8 relief from the automatic stay, the 14-day stay under Bankruptcy Rule 4001(a)(3) should apply.  
9

10 WHEREFORE, the Debtor respectfully requests that (a) the Motion be denied in its  
11 entirety, (b) Mr. Swarts be authorized to complete his valuation of the PC, and (c) such other  
12 relief as the Court deems just or proper.  
13

14 Dated this 5th day of November, 2014.  
15

16 Respectfully Submitted,

17 /s/Samuel A. Schwartz

18 Samuel A. Schwartz, Esq.

19 Nevada Bar No. 10985

20 Bryan A. Lindsey, Esq.

21 Nevada Bar No. 10662

22 The Schwartz Law Firm, Inc.

23 6623 Las Vegas Blvd. South, Suite 300

24 Las Vegas, Nevada 89119

25 Telephone: (702) 385-5544

26 Facsimile: (702) 385-2741

27 Attorneys for the Debtor  
28  
29  
30  
31  
32

**CERTIFICATE OF SERVICE**

I HEREBY certify that a true and correct copy of the foregoing was sent  
ELECTRONICALLY on November 5, 2014, to the following:

U.S. TRUSTEE - LV - 11  
USTPRegion17.lv.ecf@usdoj.gov

JASON ELLIS PHOTOGRAPHY  
jasonellisphoto@yahoo.com

JASON ELLIS  
[jasonellisphoto@yahoo.com](mailto:jasonellisphoto@yahoo.com)

ERIK W. FOX on behalf of Debtor JEFFRY S. LIFE  
EFOX@MACLAW.COM, HBENEDICT@MACLAW.COM

TIMOTHY A LUKAS on behalf of Creditor CENEGENICS, LLC  
ecflukast@hollandhart.com

EDWARD M. MCDONALD on behalf of U.S. Trustee U.S. TRUSTEE - LV - 11  
edward.m.mcdonald@usdoj.gov

JOSEPH G. WENT on behalf of Creditor CENEGENICS, LLC  
JGWent@hollandhart.com, agstajkowski@hollandhart.com

/s/Christy L. Cahall  
Christy L. Cahall